

Overstreet, Greg (ATG)

From: Dorn, Carol J.
Sent: Wednesday, January 04, 2006 7:14 AM
To: Overstreet, Greg (ATG)
Subject: FW: Proposed Model Rules for Public Records

*Washington
Dept of Ecology*

Included are my comments.

Thank you!
Carol Dorn

should so indicate and indicate a willingness to pay for the records. Pursuant to section (insert section), standard photocopies will be provided at (amount) cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on-line at (web site address).

(d) The public records officer may accept requests for public records that contain the above information by telephone or in person. If the public records officer accepts such a request he or she will confirm receipt of the information and the substance of the request in writing.

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Summary of Comments on M:\DATA\PWA VOTS-8492.2.wp [PFP#1151864579]

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Author: csg461
Subject: Note
Date: 12/19/2005 12:45:49 PM
Electronic request by e-mail accepted as well?

Comments to WAC 44-14-030

NEW SECTION

WAC 44-14-03001. "Public record" defined. Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used, or retained" by an agency.

(1) Writing. A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "... handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.17.020(48).

(2) Relating to the conduct of government. To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the

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public records officer shall process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer shall do one or more of the following:

(a) Make the records available for inspection or copying (or, if so requested and payment for the records is made or terms of payment are agreed upon, send the records to the requestor);

(b) Provide a reasonable estimate of when records will be available; or

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available.

(3) **Consequences of failure to respond.** If the public records officer does not respond in writing within five working days of receipt of the request for disclosure, the request may be deemed denied and the requestor may obtain internal agency review or seek judicial review of the denial. See WAC 44-14-080 (2) and (4).

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall redact the exempt portions, provide the remaining portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) The (agency) shall provide space to inspect public records and provide staff assistance to make any requested copies. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes to have copied.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. If the requestor or a representative of the requestor fails to make arrangements to claim or review the records within the thirty-day period, the agency may close the request and refile the assembled records. A subsequent request for the same or almost identical records can be processed last.

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Author: zsg461

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Not in the order of when request received?

(7) **Providing copies of records.** After inspection is complete, the public records officer shall make the requested copies.

(8) **Large requests.** When the request is for a large number of records, the public records officer may provide access for inspection and copying in installments, if the officer reasonably determines that it would be practical to provide the records in that way. If, within a reasonable time, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, or when the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer shall close the request and indicate to the requestor that the (agency) has completed a diligent search for the requested records.

(10) **Later discovered documents.** If, after the (agency) has informed the requestor that it has provided all available records, the (agency) becomes aware of additional responsive documents existing at the time of the request, it shall promptly inform the requestor of the additional documents and provide them on an expedited basis, along with a written explanation of why they were not previously located and provided.

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Comments on WAC 44-14-040

NEW SECTION

WAC 44-14-04001 Introduction. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor has a duty to request identifiable records, inspect the assembled

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Author: ccsgh451

Subject: Note

Date: 12/19/2005 1:28:26 PM

...or agency staff responding to the request...

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NEW SECTION

WAC 44-14-04006 Closing request and documenting compliance.

(1) **Fulfilling request and closing letter.** A records request has been fulfilled and can be closed when a requestor has inspected all the requested records, all copies have been provided, a web link has been provided (with assistance from the agency in finding it, if necessary), an objectively unclear request has not been clarified, a request or installment has not been claimed or reviewed, or the requestor cancels the request. An agency should provide a closing letter stating the scope of the request and memorializing the outcome of the request. The outcome described in the closing letter might be that the requestor inspected records, copies were provided (with the number range of the stamped or labeled records, if applicable), the agency sent the requestor the web link, the requestor failed to clarify the request, the requestor failed to claim or review the records within thirty days, or the requestor canceled the request. The closing letter should also ask the requestor to promptly contact the agency if he or she believes additional responsive records have not been provided.

(2) **Returning assembled records.** An agency is not required to keep assembled records set aside indefinitely. This would "unreasonably disrupt" the operations of the agency. RCW 42.17.270. After a request has been closed, an agency should return the assembled records to their original locations. Once returned, the records are no longer subject to the prohibition on destroying records scheduled for destruction under the agency's retention schedule. RCW 42.17.290.

(3) **Retain copy of records provided.** In some cases, it may be wise for the agency to keep a separate copy of the records it copied and provided in response to a request. This allows the agency to document what was provided. A growing number of requests are for a copy of the records provided to another requestor, which can easily be fulfilled if the agency retains a copy of the records provided to the first requestor. The copy of the records provided should be retained for a period of time consistent with the agencies retention schedules for documents with legal value.

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Author: csg461

Subject: Note

Date: 12/28/2005 9:49:24 AM

Unless this causes an undo burden on the agency to do so? Some of the requests I get are very large and it would be such a waste of tax payer paid paperland staff time to

- 1, prepare a second copy
- 2, providing storage for these is costly, on a ten year retention schedule thats a lot of money
- 3, not environmentally friendly to waste unneeded paper copies
- 4, duplicate work

NEW SECTION

WAC 44-14-07005 Waiver of copying charges. An agency has the discretion to waive copying charges. For administrative convenience, many agencies waive copying charges for small requests. For example, the attorney general's office does not charge copying fees if the request is for twenty-five or fewer standard photocopies.

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NEW SECTION

WAC 44-14-07006 Requiring partial payment. (1) Copying deposit. An agency may charge a deposit of up to ten percent of the estimated copying costs of an entire request before beginning to copy the records. RCW 42.17.300 (2005). The estimate must be reasonable. An agency can require the payment of the deposit before copying an installment of the records or the entire request. The deposit applies to the records selected for copying by the requestor, not all the records made available for inspection. An agency is not required to charge a deposit. An agency might find a deposit burdensome for small requests where the deposit might be only a few dollars. Any unused deposit must be refunded to the requestor.

When copying is completed, the agency can require the payment of the remainder of the copying charges before providing the records. For example, a requestor makes a request for records that comprise one box of paper documents. The requestor selects the entire box for copying. The agency estimates that the box contains three thousand pages of records. The agency charges ten cents per page so the cost would be three hundred dollars. The agency obtains a ten percent deposit of thirty dollars and then begins to copy the records. The total number of pages turns out to be two thousand nine hundred so the total cost is two hundred ninety dollars. The thirty dollar deposit is credited to the two hundred ninety dollars. The agency requires payment of the remaining two hundred sixty dollars before providing the records to the